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Enforcement Task Force Announcement is Latest Sign of SEC Focus on ESG and Climate

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On March 4, 2021, the U.S. Securities and Exchange Commission ("SEC") announced the creation of a Climate and ESG Task Force in the Division of Enforcement comprising 22 members from across the SEC and led by Kelly L. Gibson, Acting Deputy Director of Enforcement. While this announcement is noteworthy for its clarity regarding enforcement as an area of focus and its broad implications for private and public markets alike, it is consistent with recent messaging from the SEC and certain other federal agencies that ESG and climate issues are at the forefront of their agendas. In addition, the task force is a sign that climate change is increasingly being viewed as a financial risk issue as well as an environmental issue, and is therefore likely to remain a discrete area of focus within the broader ESG landscape for regulators and policymakers.

According to the March 4 press release, the task force plans to "use sophisticated data analysis to mine and assess" registrants' climate and ESG disclosures. It will initially focus on taking action against issuers whose disclosures contain material gaps or misstatements with respect to climate risk, as well as disclosure and compliance issues relating to investment advisers' and funds' ESG strategies. The task force will also evaluate and pursue tips, referrals, and whistleblower complaints on ESG-related issues.

The task force demonstrates that the SEC intends to focus on ESG and climate across the entire agency. On February 1, the agency announced it was appointing Satyam Khanna as its first-ever Senior Policy Advisor for Climate and ESG. Subsequently, Acting Chair Allison Herren Lee directed the Division of Corporation Finance to review the extent to which public companies are following the agency's 2010 climate disclosure guidance and to update that guidance based on its findings. And the

Division of Examinations' 2021 Examination Priorities, released on March 3, include evaluating: (i) the adequacy and accuracy of ESG disclosures and whether proxy voting policies and practices align with investors' ESG expectations based on those disclosures, particularly with respect to widely available products; and (2) whether asset managers' business continuity plans account for physical climate risk.

In response to the task force announcement, the SEC's two Republican Commissioners, Hester M. Peirce and Elad L. Roisman, released a statement calling the creation of the task force premature and suggesting the agency should have waited for the results of the Division of Corporation Finance's and Division of Examinations' initiatives before announcing a new enforcement initiative. But agency leadership shows no signs of slowing down. With the task force, Acting Chair Lee has clearly signaled a belief that the SEC can more robustly police ESG and climate disclosures under existing regulations and guidance even as it, and Congress,[1] consider updates to those standards. Meanwhile, at his confirmation hearing on March 2, Biden's nominee for SEC chair, Gary Gensler, noted that investors want to see meaningful climate risk disclosures and said he would work on that issue if confirmed.

In the following related articles, we have written about climate and ESG-related disclosures and/or SEC's and other federal agencies' regulatory developments:

- Expected ESG and Climate Regulation Impacting Private Equity Under the Biden Administration
- CFTC Panel Calls for Sweeping Climate Change Risk Regulation
- Four Key Steps to Assessing and Mitigating Climate Risk
- U.S. Regulators Increase Focus on ESG as Investor Demand Grows: What Private Equity Firms Need to Know

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1. Members of Congress have introduced at least four bills so far this session that would require enhanced ESG and/or climate disclosures by public companies, including the Shareholder Political Transparency Act (H.R. 1087), the ESG Disclosure Simplification Act (H.R. 1187), the Improving Corporate Governance Through Diversity Act (H.R. 1277), and the CLEAN Future Act (H.R. 1512). ↩

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Suggested Reading

- 16 February 2021 Kirkland Alert Expected ESG and Climate Regulation Impacting Private Equity Under the Biden Administration
- 12 February 2021 In the News BlackRock Net-Zero Targets May Prove Net Positive for Activists
- 01 February 2021 Kirkland Governance Update r/BlackRockAnnualLetter: Climate Change and ESG in the Age of Reddit